REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the amendments above and the following comments.

Claims 2 and 3 were rejected under 35 USC § 112, second paragraph, as being indefinite. In response, Applicants have canceled claims 2 and 3 in favor of new claims 4 and 8, respectively, and made the "in particular" clause of claims 2 and 3 the subject of new claims 7 and 11, respectively. New claims 4 and 8 are written in conventional "method of use" format, and recite the positive method step of "incorporating into said preparation * * * an effective amount therefor of one or more phospholipids."

Claims 2 and 3 were rejected under 35 USC § 101 as being improper process claims. In response, as noted above, Applicants have replaced claims 2 and 3 by new method of use claims 4 and 8, respectively, which both recite a positive method step.

Claims 1-3 were rejected under 35 USC § 102(b) as being anticipated by EP 0 771 556 or Magdassi, U.S. Patent No. 5,518,736, or FR 2 667 072. In response, Applicants would remind the Examiner that anticipation requires that each and every element as set forth in the claim must be found, either expressly or inherently described, in a single prior art reference, and, further, if

the Examiner relies on a theory of inherency as to any particular element, then the extrinsic evidence must make clear that such element is *necessarily* present in the thing described in the reference, and the presence of such element therein would be so recognized by persons skilled in the art. *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). Further, inherency is not established by probabilities or possibilities, and the mere fact that a property may result from a given circumstances is not sufficient; instead it must be shown that such property necessarily inheres in the thing described in the reference. *Id.* In connection with the obviousness rejections, the Examiner concedes that it is not clear whether any of the cited references teach the molecular weights or degree of deacylation recited in the present claims. Accordingly, it follows that the Examiner has not discharged his burden of showing where these limitations, which are required by the claims, are expressly described by the cited references, or are necessarily inherently described by the cited references. In the absence of such showing, Applicants submit that the Examiner has not made out a *prima facie* case of anticipation. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw this rejection.

Claims 1-3 were rejected under 35 USC § 103(a) as being obvious over EP 0 771 556 or Magdassi, each taken individually or in combination. In response, Applicants point out that the present claims are drawn either to "[a] method of reducing the tackiness of a cosmetic or dermatological preparation" (claims 4-7) or to "[a] method of increasing the stability of a cosmetic or dermatological preparation" (claims 8-11). Although the Examiner includes claims

2 and 3 in this rejection, and the new claims are based on claims 2 and 3, the Examiner has not shown where in EP 0 771 556 or Magdassi, or in their combination, there is any teaching of the claimed methods. Absent such showing, Applicants submit that the Examiner also has not made out a *prima facie* case of obviousness. Accordingly, Applicants also submit that the Examiner would be fully justified to reconsider and withdraw this rejection.

Claims 1-3 were rejected under 35 USC § 103(a) as being obvious over FR 2 667 072 alone or in combination with EP 0 771 556. In response, the arguments made above in response to the first obviousness rejection apply with equal force here. There is no teaching of the present methods in FR 2 667 072 or in EP 0 771 556, or in their combination. Accordingly, the present claims would not have been *prima facie* obvious from FR 2 667 072 alone or in combination with EP 0 771 556.

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (914) 332-1700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Amendment under 37 CFR § 1.111 and the accompanying Petition for Extension of Time (9 pages total) is being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below.

Date: August 9, 2000

By _____
Kurt G. Briscoe